

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE
2004 JUN -2 P 3:54
U.S. DISTRICT COURT
DISTRICT OF MASS.

PHILIP L. TROPEANO, PETER TROPEANO,
CAROLYN PATTON,

Plaintiffs

v.

CHARLENE DORMAN, BIANCA DORMAN,
LYDIA DORMAN, TODD DORMAN,
T&N REALTY TRUST AND
CAPTAIN PARKER ARMS PARTNERSHIP,

Defendants


CIVIL ACTION
CASE NO. 03CV12231 (RGS)

**MOTION TO DISMISS FIRST AMENDED COMPLAINT
FOR FAILURE TO STATE A CLAIM UNDER RULE 12(b)(6)**

Pursuant to Fed. R. Civ. P. 12(b)(6), Charlene Dorman, Bianca Dorman, Lydia Dorman, Todd Dorman, T&N Realty Trust and Captain Parker Arms Partnership (collectively "the defendants"), hereby move to dismiss or in the alternative for summary judgment on all of the plaintiffs' First Amended Complaint. As set forth in more detail in the accompanying Memorandum of Law in Support of Defendants' Motion to Dismiss First Amended Complaint for Failure to State a Claim under Rule 12(b)(6), the plaintiffs have failed to state a claim upon which relief can be granted because (a) plaintiffs and defendants are partners under a partnership agreement which expressly precludes this action, and (b) the Massachusetts Uniform Partnership Act specifically provides that its terms yield in the face of a partnership agreement providing otherwise.

Accordingly, the defendants' motion to dismiss or in the alternative for summary judgment should be allowed.

Respectfully submitted,
Charlene Dorman, Bianca Dorman,
Lydia Dorman, Todd Dorman, T&N
Realty Trust and Captain Parker Arms
Partnership
By their Attorney,

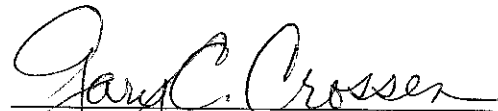


Gary C. Crossen, BBO # 106580 (HRC)
Rubin and Rudman LLP
50 Rowes Wharf
Boston, MA 02110
Tel.: (617) 330-7036

Dated: June 1, 2004

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2004, I sent a copy of the foregoing by hand delivery and by U.S. Mail to Thomas M. Ciampa, Esq., 33 Mount Vernon Street, Boston, MA 02108.



Gary C. Crossen (HRC)

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June 1, 2004

Via Hand Delivery

Clerk of Court
United States District Court
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA 02110


Re: Philip Tropeano, et al. v. Captain Parker Arms Partnership, et al.,
U.S. District Court No. 03-CV-12231-RGS

Dear Sir/Madam:

Enclosed for filing please find Defendants' Motion to Dismiss First Amended Complaint and Memorandum of Law in Support of Defendants' Motion to Dismiss First Amended Complaint for Failure to State a Claim Under Rule 12(b)(6).

Please call with any questions.

Very truly yours,


Gary C. Crossen *MC*

GCC/lac
Enclosure

cc: Ms. Charlene Dorman
Mr. Todd Dorman
Thomas M. Ciampa, Esq.